

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

|                     |   |                               |
|---------------------|---|-------------------------------|
| COGNEX CORPORATION, | ) |                               |
| Plaintiff,          | ) |                               |
|                     | ) |                               |
| v.                  | ) | CIVIL ACTION NO. 04 12365 JLT |
|                     | ) |                               |
| JEAN CARON,         | ) |                               |
| Defendant.          | ) |                               |
|                     | ) |                               |

**PLAINTIFF'S MOTION TO REMAND AND FOR COSTS**  
**PURSUANT TO 28 U.S.C. § 1447(c)**  
**AND REQUEST FOR ORAL ARGUMENT**

Pursuant to the requirements of 28 U.S.C. § 1447(c), Plaintiff, Cognex Corporation, moves this Court to remand the within action to the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts, Middlesex County [“Middlesex County Superior Court”]. Plaintiff further seeks an award of costs, including attorneys’ fees, incurred by Plaintiff as a result of the removal by Defendant of this action to this Court.

In support of this Motion, Plaintiff states as follows:

1. Plaintiff commenced an action against Defendant in the Middlesex County Superior Court on August 2, 2004, seeking injunctive relief to enforce restrictive covenants against Defendant in connection with his prior employment by Plaintiff.
2. Plaintiff obtained a Temporary Restraining Order against Defendant, restraining and enjoining him from, inter alia, employment by a company in direct competition with Plaintiff. The Temporary Restraining Order was extended by the Middlesex County Superior

Court on August 11, 2004, and again on October 25, 2004, and continues to remain in full force and effect as of the date of this Motion.

2. As Defendant is a resident of Belgium, and as Defendant had misrepresented his then current address, Plaintiff was not able to effect service upon Defendant until October 8, 2004. Service was made in hand in Belgium by a duly authorized process server.

3. On November 8, 2004, Defendant, through his counsel, filed a Notice of Removal Pursuant to 28 U.S.C. § 1441(a) with this Court and a Notice of Filing of Notice of Removal with the Middlesex County Superior Court. In its Notice of Removal, Defendant states that jurisdiction is appropriate in this Court on the basis of diversity jurisdiction, as the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

4. There is no factual or legal basis upon which Defendant can meet its burden of demonstrating that the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00). Roche v. American Red Cross, 680 F.Supp. 449, 450 (D.Mass. 1988), quoting Miller v. Grgurich, 763 F.2d 372, 373 (9th Cir. 1985)(“The burden of establishing federal jurisdiction rests with the party seeking removal.”). This action must therefore be remanded to the Middlesex Superior Court.

In further support of this Motion, Plaintiff’s Memorandum of Law is filed contemporaneously herewith.

WHEREFORE, as the District Court does not have subject matter jurisdiction over this action, it must be remanded to the Middlesex County Superior Court and costs, including reasonable attorneys’ fees, incurred by Plaintiff as a result of the removal must be awarded to Plaintiff.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Plaintiff believes that oral argument may assist the Court and respectfully requests an oral argument on its Motion to Remand.

Plaintiff,  
COGNEX CORPORATION,  
By its attorneys,

/s/ James E. O'Connell, Jr.  
James E. O'Connell, Jr., BBO# 376475  
Jennifer A. Yelen, BBO# 565205  
PERKINS SMITH & COHEN LLP  
One Beacon Street  
Boston, Massachusetts 02108  
(617) 854-4000

Dated: November 17, 2004

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| Defendant.          | ) |                               |
|                     | ) |                               |

**PLAINTIFF’S CERTIFICATION PURSUANT TO  
LOCAL RULE 7.1(A)(2) OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

Pursuant to Local Rule 7.1(A)(2) of the United States District Court for the District of Massachusetts, I, James E. O’Connell, Jr., certify as follows:

1. I am counsel of record for Plaintiff, Cognex Corporation, in the above-captioned action.
2. On November 17, 2004 at 10:45a.m., I conferred with counsel of record for Defendant, Sally Adams, Esq., regarding Plaintiff’s anticipated Motion to Remand Pursuant to 28 U.S.C. § 1447(c) [“Motion to Remand”]. We attempted in good faith to resolve or narrow the issues relating to the Motion to Remand; our efforts proved unsuccessful.

/s/ James E. O’Connell, Jr. \_\_\_\_\_  
James E. O’Connell, Jr.

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